

ESTTA Tracking number: **ESTTA448424**

Filing date: **12/27/2011**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91197005
Party	Plaintiff Gold Rush Brands, LLC
Correspondence Address	EDMUND J FERDINAND III JEFFERS COWHERD PC 55 WALLS DR FAIRFIELD, CT 06824 5163 UNITED STATES jferdinand@jeffers-law.com
Submission	Other Motions/Papers
Filer's Name	Edmund J. Ferdinand, III
Filer's e-mail	jferdinand@jeffers-law.com
Signature	/ejf/
Date	12/27/2011
Attachments	PAN AM AMENDED NOTICE OF OPPOSITION.pdf (3 pages)(90494 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE
TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Trademark Application Serial No. 77/931,658
For the Mark PAN AM & Design

	X	
	:	
Gold Rush Brands, LLC,	:	
	:	
Opposer,	:	
	:	
v.	:	Opposition No.: 91/197,005
	:	
Pan Am World Airways, Inc.,	:	
	:	
Applicant	:	
	X	

AMENDED NOTICE OF OPPOSITION

In response to the Board's Order, dated December 12, 2011, Gold Rush Brands, LLC ("Opposer"), hereby submits this Amended Notice of Opposition. Opposer believes that it will be damaged by registration of the mark shown in Application Serial No. 77/931,658 and hereby opposes the same. The grounds for opposition are as follows:

1. Opposer is a corporation organized and existing under the laws of the State of New York, having an address at Box 146H, Scarsdale, New York 10583. Opposer owns broad rights to the PAN AM trademark internationally, including in Europe, Asia, South America, Canada and Mexico.

2. Upon information and belief, Applicant, Pan Am World Airways, Inc. ("Applicant"), filed Application Serial No. 77/931,658 for PAN AM & Design as a mark for use in connection with "air transportation of passengers and freight" in International Class 39 on February 12, 2010. The application was filed pursuant to Section 1(b) of the Trademark Act. Said application was published for opposition on June 22, 2010.

3. Opposer filed an application for the mark PAN AM & Design for use in connection with “transportation of goods, passengers and travelers by air” in International Class 39 on February 19, 2010. Opposer’s application was rejected pursuant to Section 2(d) of the Trademark Act by virtue of Applicant’s application for PAN AM & Design.

4. Applicant does not exist as a legal entity. Applicant’s counsel has confirmed this fact in submissions to the Trademark Trial and Appeal Board in this action.

5. Applicant’s counsel has represented to the Board that the instant application was filed in the name of the Applicant in error, that the true owner of the application should be Pan American World Airways, Inc. and that the filing error was inadvertent, not intentional.

6. The veracity of Applicant’s counsel’s representations must be tested during the discovery process in this proceeding.

7. Even assuming, *arguendo*, that the assertions of Applicant’s counsel are accurate, it is important to note that the Board has refused to permit trademark applications to be amended where circumstances so required. See TMEP §§ 802.06 and 802.07; *In re Tong Yang Cement Corp.*, 19 U.S.P.Q.2d 1689 (TTAB 1991); *In Re Atlanta Blue Print Co.*, 19 U.S.P.Q.2d 1078 (Comm’r 1990); *In re Techsonic Industries, Inc.*, 216 U.S.P.Q.2d 619 (TTAB 1992); and *In re Eucryl Ltd.*, 193 U.S.P.Q. 377 (TTAB 1976).

8. Indeed, there are a line of cases confirming that where, as here, the Applicant is not the true owner of the application, the application should be voided *ab initio*. See, e.g., *Anheuser-Busch Inc. v. The Florists Association of Greater Cleveland Inc.*, 29 USPQ2d 1146 (TTAB 1993); *Treadwell's Drifters Inc. v. Marshak*, 18 USPQ2d 1318, 1320 (TTAB 1990); and *Kemin Industries, Inc. v. Watkins Products, Inc.*, 192 USPQ 327, 328 (TTAB 1976).

9. Accordingly, Opposer pleads as its sole ground for opposition that Applicant is not (and was not, at the time of the filing of the instant application), the rightful owner of the instant application, and no valid grounds exist for amending the application. As a result, the application should be declared void ab initio.

WHEREFORE, Opposer respectfully requests that this Opposition be sustained and that Applicant's application to register PAN AM & Design, Application Serial No. 77/931,658, be refused, and for such other and further relief as the Board deems just and proper.

Dated: December 27, 2011

Respectfully submitted,
Gold Rush Brands, LLC

By: /EJF/
Edmund J. Ferdinand, III, Esq.
Jeffers Cowherd P.C.
55 Walls Drive
Fairfield, CT 06824

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of this Response was served on the Applicant on this 27th day of December, 2011 by sending a copy of the document in an envelope via U.S. mail addressed to the Applicant's representative and counsel of record:

ROBERT B CULLIFORD
PAN AM RAILWAYS
400 AMHERST ST STE 405
NASHUA, NH 03063 4225
UNITED STATES

DANIEL GARRELICK, ESQ.
SPRINGFIELD TERMINAL RAILWAY CO.
1700 IRON HORSE PARK
BILLERICA, MA 01862

 /EJF/
Edmund J. Ferdinand, III